

**OCCUPATIONAL SAFETY  
AND HEALTH STANDARDS BOARD**

2520 Venture Oaks Way, Suite 350  
Sacramento, CA 95833  
(916) 274-5721  
FAX (916) 274-5743  
Website address [www.dir.ca.gov/oshsb](http://www.dir.ca.gov/oshsb)



**PROPOSED PETITION DECISION OF THE  
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD  
(PETITION FILE NO. 490)**

**INTRODUCTION**

The Occupational Safety and Health Standards Board (Board) received a petition on January 2, 2007, from David W. Smith (Petitioner). The Petitioner requests the Board to amend the California Code of Regulations, Title 8, General Industry Safety Orders (GISO), Section 3248(a) with regard to mechanical refrigeration.

Section 142.2 permits interested persons to propose new or revised standards concerning occupational safety and health, and requires the Board to consider such proposals, and render a decision no later than six months following receipt. Further, as required by Labor Code Section 147, any proposed occupational safety or health standard received by the Board from a source other than the Division of Occupational Safety and Health (Division) must be referred to the Division for evaluation, and the Division has 60 days after receipt to submit a report on the proposal.

**SUMMARY**

The Petitioner is requesting the Board to amend Section 3248(a) of the GISO regarding standards for mechanical refrigeration. During the process of appealing a citation for one of his clients, the Petitioner became aware that Section 3248(a) contains a reference to the 1982 Uniform Mechanical Code (UMC) which appears to no longer be available in the public domain. After following his usual research protocols, the Petitioner was unable to obtain a copy of the specified chapters of the 1982 UMC which are incorporated by reference in this standard. The Petitioner contends that because these specified chapters of the 1982 UMC which are incorporated by reference are no longer in the public domain, this standard is no longer enforceable.

Therefore, the Petitioner is requesting that the text from the specified chapters of the 1982 UMC which are incorporated by reference in Section 3248(a) should be promulgated in their entirety into Section 3248(a). The Petitioner believes that this recommendation would relieve the burden on the regulated public from having to search and obtain these documents that are no longer available. Furthermore, the Petitioner recommended against referencing the 1997 UMC in Section 3248(b) unless there is a definite need to.

### DIVISION'S EVALUATION

The Division's evaluation report dated March 5, 2007, states that the Division disagrees with the Petitioner's belief that Section 3248(a) which incorporates by reference specified chapters of the 1982 UMC is no longer enforceable because this edition is not in the public domain. The Division indicated that the Uniform Mechanical Code is a proprietary publication and that no version of the UMC is presently in the public domain. Therefore, the Division noted that if the regulated public needs to refer to the specified chapters of the 1982 UMC, they may obtain assistance by contacting the copyright holder [International Association of Plumbing and Mechanical Officials (IAPMO)], the Division, or the Board.

However, the Division contends that if the Board determines that there is a need to publish the text of the specified chapters of the 1982 UMC into Section 3248(a), and the Board is able to obtain a release from the copyright owner, the Division would support the adoption of this petition.

### BOARD STAFF'S EVALUATION

Board staff prepared an evaluation report dated March 12, 2007, which indicated that the standards for mechanical refrigeration contained in Section 3248 are based on obsolete editions of the UMC, specifically, the 1982 UMC which is extremely difficult to find in the public domain.

The Board staff report refers to Section 3248, Mechanical Refrigeration that states:

- (a) *Mechanical refrigeration systems place in serviced before March 13, 1999, shall be designed, installed, tested, and maintained in accordance with Chapters 4, 15, and 16 of the 1982 Uniform Mechanical Code (UMC).*
- (b) *Mechanical refrigeration systems placed in service on or after March 13, 1999, shall be designed, installed, tested, and maintained in accordance with Chapters 2 and 11 of the 1997 Uniform Mechanical Code which is hereby incorporated by reference.*

\* \* \* \*

The Board staff report explained that standards that incorporate by reference obsolete editions of specified documents are in violation of the Administrative Procedure Act, Government Code Sections 11349-11349.1 that specify proposed standards must meet the criteria for "clarity" and "consistency." The Board staff report noted that "clarity" means written or displayed so that the meaning of the standards will be easily understood by those persons directly affected by them, and "consistency" means being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

The Board staff report indicated that referenced standards that are not easily obtainable by the regulated public fail to meet the clarity test. In addition, Section 3248's reference to obsolete codes makes this section inconsistent with other, more up-to-date standards adopted by other state agencies for mechanical refrigeration. As such, Section 3248 references the UMC, which is

a national consensus standard published by the IAPMO, the copyright holder, rather than the California Mechanical Code (CMC) which is the code building officials in California are obligated by Health and Safety Code Section 18938 to enforce. The Board staff report noted that California's building officials are currently enforcing the 2001 CMC which is based on the 2000 UMC. Furthermore, the California Building Standards Commission recently announced that effective January 1, 2008, the 2006 CMC, which is based on the 2006 UMC, will be enforceable. The 2006 CMC will contain state-of-the-art standards for the design, construction, installation, servicing, and maintenance of mechanical refrigeration systems which exceed those currently in force in California.

Therefore, the Board staff report disagrees with the Petitioner's request to incorporate the 1982 UMC language into Title 8 as this would enshrine obsolete standards. Also, the UMC is a copyrighted document. The Board staff report believes that a more logical approach to adopting mechanical codes is to require that mechanical installations within Cal-OSHA's jurisdiction be installed in accordance with the CMC in effect at the time the building permit was issued. This recommendation would be consistent with Section 104.2 of the 2001 CMC which states:

*"Mechanical systems lawfully in existence at the time of the adoption of this code may have their use, maintenance or repair continued if the use, maintenance or repair is in accordance with the original design and location and no hazard to life, health or property has been created by such mechanical system."*

### CONCLUSION AND ORDER

The Occupational Safety and Health Standards Board has considered the petition of Mr. David W. Smith, Petitioner, to amend Title 8, Section 3248(a) with regard to mechanical refrigeration. The Board has also considered the recommendations of the Division and Board staff. For the reasons stated in the preceding discussion, the Petition is hereby GRANTED to the extent that a rulemaking be proposed to harmonize Title 8, Section 3248 of the GISO with Title 24 standards regarding mechanical refrigeration. The proposed language shall provide for the continued use of mechanical systems lawfully installed prior to the adoption of these changes provided they are being maintained in conformance with the code under which they were installed. Any changes shall also ensure that California standards are at least as effective as counterpart federal standards.